



California Fair Political Practices Commission

December 9, 1987

Randy Riddle
Deputy City Attorney
City Hall, Room 206
San Francisco, CA 94102-4682

Re: Your Request for Advice
Our File No. A-87-282

Dear Mr. Riddle:

You have requested advice on behalf of Supervisor Carol Ruth Silver about application of the Political Reform Act (the "Act")^{1/} to her duties on the Board of Supervisors.

QUESTIONS

1. May Supervisor Silver introduce legislation that will materially affect sources of income to her?
2. Even if Supervisor Silver may introduce such legislation, is she disqualified from participating after its introduction?
3. If Supervisor Silver may not introduce the legislation nor participate in board activities regarding the legislation, may she delegate decisions about it to a legislative or office assistant?
4. May Supervisor Silver give her work product concerning the legislation to another supervisor who might introduce his or her own legislation on the same issue?

CONCLUSION

Zephyr Realty, the company through which Ms. Silver conducts business, is a source of income to Ms. Silver. Unfortunately, we do not have enough information to determine the financial effect of the legislation on Zephyr Realty. Ms. Silver would be disqualified from preparing and introducing legislation that would have a reasonably foreseeable material financial effect on Zephyr Realty, which is distinguishable from its effect on the public generally.

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

On the other hand, Ms. Silver is not disqualified from introducing legislation that would materially affect her present clients because these sources of income constitute a significant segment of the public whom the legislation will affect similarly.

FACTS

Carol Ruth Silver is a member of the Board of Supervisors of the City and County of San Francisco and she owns her home, but no other real property. She also is a real estate agent and an associate broker at Zephyr Realty. When Ms. Silver arranges a sale of property, she receives a portion of Zephyr Realty's brokerage fee. She has no investment interest in Zephyr and is not an officer, partner or employee. Ms. Silver does not employ real estate agents nor does she pay others for referring clients to her.

In the past twelve months, Ms. Silver has represented the following clients: 1) the buyer of a condominium; 2) one buyer of a two-unit and one buyer of a three-unit building, each of whom will live in his or her building; 3) two buyers of two-unit buildings; and 4) one buyer and one seller of single-family homes. Ms. Silver does not believe any of these clients owns any other property in or outside the City and County of San Francisco.

Supervisor Silver wants to introduce legislation requiring every owner of a building in San Francisco to pay for a certified asbestos inspector to inspect the owner's building for asbestos. The owner also would have to pay for the costs of abating the asbestos problem. Owner-occupied buildings of four or fewer units would be exempt until sale. At that time the seller would pay for the inspection and abatement of the asbestos hazard, unless the buyer agreed to a different payment arrangement.

Presently the costs of inspection and abatement are uncertain. You wrote that some estimates have put the cost of inspection between \$.03 and \$.20 a square foot. An owner of a 2,250 square-foot single-family home may pay from \$67.50 to \$450 for an inspection. An owner of a 10,000 square foot apartment building may pay \$2,000.

The cost of removing asbestos pipe insulation from a single family home may be \$3,000. Homes built between 1950 and 1980 may have ceilings containing asbestos. To remove 1,000 square feet of ceiling may cost \$14,000. Commercial buildings

built during this period might have more serious problems, such as asbestos insulation on structural beams and pipes and asbestos in acoustical ceiling tiles.

No one knows how the legislation would affect the San Francisco real estate market. Some believe the legislation would weaken the market and others believe the market is so strong the effect would be negligible.

ANALYSIS

Effect on an Income Source Who is a Member of a Significant Segment of the General Public

Ms. Silver is a public official and shall not make, participate in, or attempt to influence a governmental decision in which she has a financial interest. (Sections 82048 and 87100.)

Ms. Silver also is a real estate broker conducting business through Zephyr Realty. A buyer or seller of real property in San Francisco who had promised to pay or had paid Ms. Silver \$250 in commission income within twelve months of a governmental decision before the board of supervisors would be an economic interest to Ms. Silver. In turn she would have a disqualifying financial interest in a governmental decision if the decision would have a reasonably foreseeable material financial effect, distinguishable from its effect on the public generally, on such a source of income. (Section 87103(c).)

In its Ferraro opinion, the Commission defined a class of persons owning three or fewer housing units to be a significant segment of the public. (In re Ferraro (1978) 4 FPCC Ops. 62, 67; Regulation 18703; copies enclosed.) Such a group has many members with diverse interests. The group's only common feature is ownership of three or fewer rental units.

All Ms. Silver's present sources of income are buyers and sellers of real property with three or fewer units. Her clients are a diverse group and their only common feature is owning real property of three or fewer units. According to the Ferraro opinion, Ms. Silver's clients are a significant segment of the general public. Because Ms. Silver owns her home and no other real property, she also is a member of this same significant segment of the public. An effect on these sources of income or on Ms. Silver will not be distinguishable from the effect on the general public.

Consequently, Ms. Silver will not have a disqualifying financial interest in legislation requiring real property owners to inspect for and correct asbestos problems. She does not have to determine whether the legislation would have a reasonably foreseeable material financial effect on the persons who presently are sources of income to her.

Nevertheless, our advice may change if Ms. Silver represents and receives income from owners of four or more units. At that time Ms. Silver should ask for more advice.

Effect on a Source of Income That is a Member of an Industry

Zephyr Realty also is a source of income to Ms. Silver because Zephyr is the brokerage business entity through which Ms. Silver conducts business. (Regulation 18704.3(b)(2)(C) and (d), copy enclosed.) Ms. Silver would be disqualified from preparing or introducing the asbestos legislation if it would have a reasonably foreseeable material financial effect on Zephyr Realty, which is distinguishable from the effect on the public generally. (Section 87103(c).)

Unlike the effect of the proposed legislation on Ms. Silver's clients, the effect on Zephyr Realty would be distinguishable from that on the general public. Zephyr Realty is a member of the real estate industry. The real estate industry in San Francisco is not a predominant industry. (Regulation 18703(c).) Because Zephyr Realty does not belong to a group that is a significant segment of the public, a material financial effect on Zephyr would be distinguishable from the effect on the public generally.

Reasonably Foreseeable Material Financial Effect

At this moment no one knows what the effect of the asbestos legislation would be. Nevertheless, the legislation might increase or decrease the selling price of real estate in San Francisco because of the costs of inspecting for and correcting asbestos problems. In turn real property sales might decrease or take more time because of the legislation's requirements.

We can not advise Ms. Silver whether the legislation will have a significant effect on Zephyr Realty. Ms. Silver is in a better position to determine the foreseeability and magnitude of any effect based on the following guidelines.

The effect of a decision is foreseeable if there is a substantial likelihood that it will increase or decrease a

Mr. Randy Riddle
December 9, 1987
Page 5

business entity's gross revenues, expenses, assets or liabilities by a significant amount. (Regulations 18702 and 18702.2, copies enclosed.) An effect does not have to be certain to be foreseeable. But if an effect were a mere possibility, it would not be foreseeable. (In re Thorner (1975) 1 FPPC Ops. 198, copy enclosed; see Witt v. Morrow (1977) 70 Cal. App.3d 817.)

Whether a decision's foreseeable effect on a business entity is material depends on the financial size of the business entity. We do not know Zephyr Realty's financial size. Nevertheless, if it were a business entity subject to Regulation 18702.2(g), the financial effect of the asbestos legislation on Zephyr Realty would be material if in a fiscal year Zephyr's gross revenues or assets or liabilities increased or decreased by at least \$10,000 or expenses were incurred or reduced by \$2,500 or more.

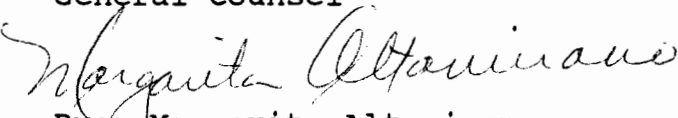
Decisionmaking

If the legislation would have a reasonably foreseeable material financial effect on Zephyr Realty, which is distinguishable from its effect on the public generally, Ms. Silver is disqualified from introducing legislation or in any other way influencing the board's decision about the asbestos legislation. This includes preparing the legislation, having office staff make recommendations about it, and giving work product to another supervisor. (See Feinstein Advice Letter, No. 84-057, copy enclosed.)

I hope this answers your advice request. Please call me at (916) 322-5901 if you have a question about this letter.

Sincerely,

Diane M. Griffiths
General Counsel


By: Margarita Altamirano
Counsel, Legal Division

DMG:MA:da
Enclosures

City and County of San Francisco:

Office of City Attorney



Louise H. Renne,
City Attorney

NOV 3 4 45 PM '87

November 3, 1987

Robert Leidigh
California Fair Political Practices Commission
Legal Division
428 "J" Street, Suite 800
Sacramento, CA 95814

Dear Mr. Leidigh:

We are writing on behalf of San Francisco Supervisor Carol Ruth Silver to request informal advice pursuant to California Government Code Section 83114. This request concerns the scope of Supervisor Silver's duty of disqualification under the conflict of interest provisions of the Political Reform Act of 1974 (Government Code Sections 81000 et seq.; "the Act"). The facts as explained to us are as follows.

Supervisor Silver is a real estate agent working as an associate broker under the auspices of Zephyr Realty. Her activities as an associate broker include bringing together buyers and sellers of single family dwellings, condominiums and rental units. When she is successful at arranging a purchase or sale, she receives a portion of the brokerage fee received by Zephyr. Supervisor Silver has no investment interest in Zephyr and is not an officer, partner or employee of Zephyr. Finally, Supervisor Silver does not employ real estate agents under her auspices nor does she contract with persons to refer potential buyers or sellers to her.

In the last twelve (12) months Supervisor Silver has received income from a variety of clients. The supervisor represented a purchaser of a condominium. Supervisor Silver has twice represented individuals who purchased a building containing two flats. She has represented the purchaser of a two unit building and the buyer of a three unit building, both of whom will live in one of the units in their purchased buildings and who rent the other units. Supervisor Silver also has represented the purchaser of a single family dwelling. Finally, she has represented the seller of a single family dwelling. Supervisor Silver has no reason to believe that the individuals she has represented in the past 12 months own any other property within the City and County of San Francisco or elsewhere.

Supervisor Silver is contemplating preparing and introducing legislation that would entail the following. First, with the exception of owner-occupied buildings of four or fewer units, the owner of every San Francisco building within one year of the issuance of the implementing regulations would be required to have the building inspected for asbestos by certified inspectors. If the building contains asbestos in a condition that poses a health risk, the owner of the building would be required to abate the asbestos problem. Further, the owners of buildings otherwise exempted, that is, owner-occupied buildings of four or fewer units would be required to comply with the inspection requirement upon sale of the property. If abatement is necessary, the seller would be responsible for completing the abatement work, unless by contract the responsibility is assumed by the buyer.

The exact financial effects of requiring the owner of a building to inspect the building and abate an asbestos problem if one is discovered is uncertain at this time. However, some estimates are available. It would cost somewhere between \$.03 and \$.20 per square foot to inspect a building, depending on the number of different materials in the building and the corresponding number of samplings that would be required. Hence, it would probably cost the owner of a single family dwelling between \$150 and \$450 to have the building inspected. It is currently contemplated that it would cost approximately \$2000 to inspect a 10,000 square foot apartment complex.

The costs of abatement are equally unclear at this time. Single family dwellings are likely to have asbestos pipe insulation. If removal of the insulation were required, it could cost up to \$3000 for an average single family home. Further, a home built between 1950 and 1980 may have ceiling materials containing asbestos. It could cost about \$14,000 to remove 100 square feet of asbestos-containing ceiling material. Commercial buildings built during this period may have more serious asbestos problems, including asbestos insulation sprayed onto structural beams and pipes and acoustical ceiling tiles containing asbestos.

It is impossible at this time to determine how the legislation would affect the San Francisco real estate market. While some might argue that the legislation would weaken the San Francisco real estate market, others would argue that the demand for real estate in San Francisco is so great that the effect of the legislation on the market would be negligible.

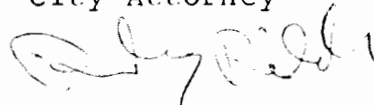
Supervisor Silver has several questions. First, given her receipt of income from the persons identified above, may Supervisor Silver introduce her proposed legislation to the Board of Supervisors? Second, if she may introduce the legislation

are there any restrictions on the role she may play with respect to the legislation? Third, if Supervisor Silver is disqualified from introducing the legislation or otherwise being involved in the legislation, may she transfer responsibility for the legislation to an assistant or legislative assistant who would then be fully and solely responsible for all decisions emanating from Supervisor Silver's office regarding the legislation? Fourth, if she is disqualified from taking any action on the legislation, may she provide the work product she has produced on the legislation to another Supervisor who could then revise the legislation in any manner they deem appropriate and thereafter introduce the legislation?

Please feel free to contact Randy Riddle at (415) 554-4211 if you need any further information to fully resolve this question.

Very truly yours,

LOUISE H. RENNE
City Attorney

A handwritten signature in dark ink, appearing to read "Randy Riddle", is written over the typed name of Randy Riddle.

RANDY RIDDLE
Deputy City Attorney

City and County of San Francisco:

Office of City Attorney



Louise H. Renne,
City Attorney

Nov 5 4 45 PM '87

87-282

November 3, 1987

Robert Leidigh
California Fair Political Practices Commission
Legal Division
428 "J" Street, Suite 800
Sacramento, CA 95814

Dear Mr. Leidigh:

We are writing on behalf of San Francisco Supervisor Carol Ruth Silver to request informal advice pursuant to California Government Code Section 83114. This request concerns the scope of Supervisor Silver's duty of disqualification under the conflict of interest provisions of the Political Reform Act of 1974 (Government Code Sections 81000 et seq.; "the Act"). The facts as explained to us are as follows.

Supervisor Silver is a real estate agent working as an associate broker under the auspices of Zephyr Realty. Her activities as an associate broker include bringing together buyers and sellers of single family dwellings, condominiums and rental units. When she is successful at arranging a purchase or sale, she receives a portion of the brokerage fee received by Zephyr. Supervisor Silver has no investment interest in Zephyr and is not an officer, partner or employee of Zephyr. Finally, Supervisor Silver does not employ real estate agents under her auspices nor does she contract with persons to refer potential buyers or sellers to her.

In the last twelve (12) months Supervisor Silver has received income from a variety of clients. The supervisor represented a purchaser of a condominium. Supervisor Silver has twice represented individuals who purchased a building containing two flats. She has represented the purchaser of a two unit building and the buyer of a three unit building, both of whom will live in one of the units in their purchased buildings and who rent the other units. Supervisor Silver also has represented the purchaser of a single family dwelling. Finally, she has represented the seller of a single family dwelling. Supervisor Silver has no reason to believe that the individuals she has represented in the past 12 months own any other property within the City and County of San Francisco or elsewhere.

Supervisor Silver is contemplating preparing and introducing legislation that would entail the following. First, with the exception of owner-occupied buildings of four or fewer units, the owner of every San Francisco building within one year of the issuance of the implementing regulations would be required to have the building inspected for asbestos by certified inspectors. If the building contains asbestos in a condition that poses a health risk, the owner of the building would be required to abate the asbestos problem. Further, the owners of buildings otherwise exempted, that is, owner-occupied buildings of four or fewer units would be required to comply with the inspection requirement upon sale of the property. If abatement is necessary, the seller would be responsible for completing the abatement work, unless by contract the responsibility is assumed by the buyer.

The exact financial effects of requiring the owner of a building to inspect the building and abate an asbestos problem if one is discovered is uncertain at this time. However, some estimates are available. It would cost somewhere between \$.03 and \$.20 per square foot to inspect a building, depending on the number of different materials in the building and the corresponding number of samplings that would be required. Hence, it would probably cost the owner of a single family dwelling between \$150 and \$450 to have the building inspected. It is currently contemplated that it would cost approximately \$2000 to inspect a 10,000 square foot apartment complex.

The costs of abatement are equally unclear at this time. Single family dwellings are likely to have asbestos pipe insulation. If removal of the insulation were required, it could cost up to \$3000 for an average single family home. Further, a home built between 1950 and 1980 may have ceiling materials containing asbestos. It could cost about \$14,000 to remove 100 square feet of asbestos-containing ceiling material. Commercial buildings built during this period may have more serious asbestos problems, including asbestos insulation sprayed onto structural beams and pipes and acoustical ceiling tiles containing asbestos.

It is impossible at this time to determine how the legislation would affect the San Francisco real estate market. While some might argue that the legislation would weaken the San Francisco real estate market, others would argue that the demand for real estate in San Francisco is so great that the effect of the legislation on the market would be negligible.

Supervisor Silver has several questions. First, given her receipt of income from the persons identified above, may Supervisor Silver introduce her proposed legislation to the Board of Supervisors? Second, if she may introduce the legislation

are there any restrictions on the role she may play with respect to the legislation? Third, if Supervisor Silver is disqualified from introducing the legislation or otherwise being involved in the legislation, may she transfer responsibility for the legislation to an assistant or legislative assistant who would then be fully and solely responsible for all decisions emanating from Supervisor Silver's office regarding the legislation? Fourth, if she is disqualified from taking any action on the legislation, may she provide the work product she has produced on the legislation to another Supervisor who could then revise the legislation in any manner they deem appropriate and thereafter introduce the legislation?

Please feel free to contact Randy Riddle at (415) 554-4211 if you need any further information to fully resolve this question.

Very truly yours,

LOUISE H. RENNE
City Attorney

A handwritten signature in dark ink, appearing to read "Randy Riddle", is written over the typed name.

RANDY RIDDLE
Deputy City Attorney



California Fair Political Practices Commission

November 9, 1987

Randy Riddle
Deputy City Attorney
City Hall, Room 206
San Francisco, CA 94102-4682

Re: 87-282


Dear Mr. Riddle:

Your letter requesting advice under the Political Reform Act was received on November 5, 1987 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact Margarita Altamirano, an attorney in the Legal Division, directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or more information is needed, you should expect a response within 21 working days if your request seeks formal written advice. If more information is needed, the person assigned to prepare a response to your request will contact you shortly to advise you as to information needed. If your request is for informal assistance, we will answer it as quickly as we can. (See Commission Regulation 18329 (2 Cal. Adm. Code Sec. 18329).)

You also should be aware that your letter and our response are public records which may be disclosed to the public upon receipt of a proper request for disclosure.

Very truly yours,


Diane M. Griffiths
General Counsel

DMG:plh
cc: Supervisor Carol Silver